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FRED YOUNG

MPP, YORKVIEW



2 report  
of the

Inquiry in respect to  
the Affairs of the  
Township of Kingston

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APR 25 1975

Documents...

by  
His Honour Judge E. M. Shortt





September 1974



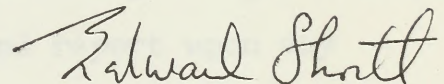


To Her Honour  
The Lieutenant Governor in Council,

May It Please Your Honour,

I, the undersigned, Edward M. Shortt, Judge of the County Court for the County of Lanark, appointed Commissioner by Order-in-Council OC-1360/73 pursuant to the provisions of Section 323 of The Municipal Act, R.S.O. 1970, Chapter 284, dated the 16th day of May, A.D. 1973 to inquire into and report upon the affairs of the Township of Kingston; and without limiting the generality of the foregoing, to inquire into and report upon any alleged violations or breaches of the provisions of The Municipal Act or The Municipal Conflict of Interest Act, 1972, by any member of the present council or of the immediately preceding council of the Township of Kingston in respect of any matter concerning the implementation of the proposal to expand the existing water and sewage facilities of the Township of Kingston:

Beg to Submit to Your Honour  
The Following Report.



30th August, 1974

Commissioner







Executive Council Office

OC-1360/73

Copy of an Order-in-Council approved by His Honour the Lieutenant Governor, dated the 16th day of May, A.D. 1973.

Upon the recommendation of the Honourable the Treasurer of Ontario and Minister of Economics and Intergovernmental Affairs, the Committee of Council advise that pursuant to section 323 of The Municipal Act, R.S.O. 1970, chapter 284, a Commission be issued appointing His Honour Edward M. Shortt, Judge of the County Court, County of Lanark, a Commissioner having all the powers that may be conferred on a Commissioner under The Public Inquiries Act to inquire into and report upon the affairs of the Township of Kingston; and without limiting the generality of the foregoing, to inquire into and report upon any alleged violations or breaches of the provisions of The Municipal Act or The Municipal Conflict of Interest Act, 1972, by any member of the present council or of the immediately preceding council of the Township of Kingston





in respect of any matter concerning the implementation of the proposal to expand the existing water and sewage facilities of the Township of Kingston;

And that the Township officials, boards and committees shall assist the Commissioner to the fullest extent in order that he may carry out his duties and functions;

And further that the Commissioner shall have authority to engage such counsel and other staff as he deems proper.

Certified,

" J. J. YOUNG"

Clerk, Executive Council.



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## INTRODUCTION.

Pursuant to such commission I appointed Donald Diplock, Q.C., as counsel and directed him to commence preparation for the public hearings by undertaking extensive investigation of the areas of concern. The Order-in-Council was issued pursuant to section 323 of The Municipal Act, R.S.O. 1970, Chapter 284, which provides inter alia that such commission may issue upon the request in writing of not less than fifty ratepayers assessed as owners and resident in the municipality. Such a request had in fact been made and consequently each person whose signature appeared thereon was interviewed under the direction of commission counsel. Concurrently advertisements were inserted in two publications circulating in the municipality inviting submissions which led to further interviews. These interviews were undertaken by Inspector Cooper and Constables Sherwin and Popi of the Ontario Provincial Police. They were evaluated by Mr. George Calver whose assistance in this and other matters was of value to the Commission.

After due publication of notice thereof in the Kingston Whig-Standard, hearings on the enquiry commenced at the Court house, Kingston on July 16th, 1973, continued until July 26, 1973, resume from October 1st, 1973 to



October 4th, 1973, and again from November 19th, 1973 to November 22nd, 1973.

One group of four persons, being the principal signatories to the request for the enquiry, was granted leave to participate in the proceedings. Although not represented by counsel, as interest parties members of the group were permitted, avoiding duplication, to examine and cross-examine all witnesses called, to participate fully in the hearings, to adduce evidence and to make submissions with respect to all matters.

At the conclusion of the public hearings written submissions and rebuttals were requested, the final one being received by the Commission in the month of April, 1974.





SUBJECT MATTER AND SCOPE OF THE INQUIRY

By the Order-in-Council I was directed to inquire into and report upon the affairs of the Township of Kingston; and without limiting the generality of the foregoing, to inquire into and report upon any alleged violations or breaches of the provisions of The Municipal Act or The Municipal Conflict of Interest Act, 1972, by any member of the present council or of the immediately preceding council of the Township of Kingston in respect of any matter concerning the implementation of the proposal to expand the existing water and sewage facilities of the Township of Kingston.

To this end I directed Commission Counsel to cause an investigation to be made, to adduce evidence at the hearings of the Enquiry and to advise me with respect to:

- (a) The water and sewage situation and the specific objections thereto of any person or persons;
- (b) The specific allegations of improper conduct in the affairs of the Township of Kingston.

In so doing I emphasized to Commission Counsel that it was not in my view the duty of the Enquiry to review in detail every occurrence in the Township during the past several years, to the end that something irregular





might or might not be discovered. On the contrary, the primary onus lay upon those who had sought the enquiry under the terms of section 323 of the Municipal Act to indicate with some precision the areas of concern which had prompted the request for the Enquiry.

Almost immediately difficulties arose which were to plague the Commission throughout the entire course of the enquiry.

The enquiry had been preceded by six months political controversy in the Township, well publicized by the local media, as appeared from exhibits filed and evidence given. Needless to say, I do not employ the term "political" as commonly used to denote a party affiliation. Indeed in that sense, to the extent that any identification was made, most of the participants appeared to have had the same party affiliation. By "political" I mean relating to decisions and actions of the Municipal Council of Kingston Township or individual members thereof. The statements made in the course of the controversy appeared as a mixture of alleged facts, inferences and opinions, and certain of the parties in large measure, envisaged the enquiry as a vehicle for securing an endorsement of these positions. This was emphatically not my view of the role of the enquiry. It is axiomatic in our system of government that it is never the function of a judge in a political





matter to substitute his opinion for that of the duly elected officials. If such officials, acting within the scope of the powers conferred upon them by the Legislature, make decisions in accordance with the prescribed procedures and untainted by improper motives, then those decisions are not subject to review or even comment by a judge. For a judge, under such circumstances, to indicate an opinion which might be taken as an endorsement, or the contrary, of a policy properly within the competence of a Municipal Council would constitute an intolerable invasion of the political rights of the Municipal electorate. After lengthy and anxious consideration I concluded that the same principle and for the same reason must of necessity apply to a Commissioner appointed under section 323 of The Municipal Act.

Accordingly I endeavoured to impress upon the complainants that they must both define and produce evidence to support their objections. They were not represented by Counsel and were naturally uninformed with respect to the law on conflict of interest, other than the wording appearing in The Municipal Act. Initially they seemed to feel that a mere allegation was sufficient and that it was the obligation of Commission Counsel to supply the supporting evidence. They were not, however, prepared to accept the opinion of Commission Counsel with respect to the law applicable to certain allegations. Specifically, with





respect to the matter of the water system, they maintained the opinion that the enquiry should determine the reasonableness or otherwise of the scheme proposed. Eventually an awkward modus vivendi was achieved but the complainants were averse to having their questions put to witnesses through the Commission Counsel. Unrepresented by Counsel, the only alternative was to permit either Mr. Milligan or Mr. Bennett to examine and cross-examine witnesses.

Lacking legal training and consequently a proper appreciation of relevancy in testimony this procedure, although unavoidable under the circumstances, added to the length of the enquiry. It also involved the introduction of matters, the unproductive nature of which could not be immediately detected, but which subsequently appeared as unfounded and irrelevant. At the conclusion of the public hearings written arguments were submitted by all parties, which dealt only with those matters of some substance. This report will deal only with the matters raised in the submissions. Matters which are not mentioned may be considered as utterly without merit.





### POLITICAL BACKGROUND

As already recounted the enquiry arose from political differences in the Township of Kingston. The chief protagonists were J. Earl McEwen and James Bennett who had been the two candidates for Reeve in the Municipal election held on December 4, 1972 when Mr. McEwen, the incumbent, had been re-elected. His business life had been spent in the food industry but much time had been devoted to politics. A resident of Kingston Township for some twenty-five years, he had first been elected reeve, by acclamation, in 1961. He had continued to occupy that position until the present, with the exception of one year when he reigned to run in a federal election. In virtue of his position, he had served at one time or another on committees of Frontenac County Council, Kingston Township Planning Board, Kingston Area Planning Board, Kingston Library Board and the local Conservation Authority.

James Bennett is a professional engineer who holds a Bachelor of Science degree from Queen's University, Master of Science and Doctor of Philosophy degrees from the University of Michigan and is an associate professor at Queen's University. He has lived in the Kingston area,



with the exception of three years, since 1953, and has lived in Kingston Township since 1967.

John F. Richardson has lived in Kingston Township since 1953 and was elected member of the Township School Board from 1957 to 1968 inclusive; and of the County School Board from 1970 to 1972 inclusive. In December of 1972 he stood unsuccessfully as candidate for deputy-reeve of the Township.

James Milligan, who took an active role in the enquiry, holds a doctorate in Physiology and teaches that subject at Queen's University. He has lived in Kingston Township for approximately four and one half years. He had supported Mr. Bennett and Mr. Richardson in the Municipal election of 1972.

Mr. Fred Howitt, a retired metallurgist, met Mr. Bennett and Mr. Milligan for the first time in February of 1973 at the initial meeting of the Kingston Ratepayers' Association. He subsequently joined with them and Mr. Richardson in a letter to the Premier of Ontario requesting an enquiry.

These four men appeared as the principal complainants but Mr. Bennett testified as the defeated candidate for reeve he had received various complaints concerning Township affairs which he felt warranted an enquiry.





It was urged that these men, two as unsuccessful candidates and the others as supporters, were politically motivated in advancing certain allegations and in requesting an enquiry. In the sense that the matters raised concerned the political affairs of the municipality this suggestion is, of course, correct. On the other hand, whatever their motivation, they were as resident ratepayers, entitled to request an enquiry under the terms of section 323 of The Municipal Act, R.S.O. Chapter 284.

Their wisdom in so doing poses only a political question subject to a political answer at the municipal level.





Land Interests of J. Earl McEwen in the  
Second Concession of the Township of Kingston

The principal foundation for allegations of conflict of interest in the implementation of the proposal to expand the existing water and sewage facilities in the Township of Kingston were the land interests of J. Earl McEwen in the Second Concession of the Township. J. Earl McEwen either jointly with his son Robert E. McEwen, a veterinarian, or through J. Earl McEwen Limited, a family company in which he held a one-third interest, purchased three parcels of land in the second concession of the Township of Kingston, known as the Ellerbeck, Allum and Bradley properties respectively. The vendor of the first parcel gave evidence that her late husband William Ellerbeck had listed the property with a realtor for some two years before it was sold to Mr. McEwen. She testified that she was aware that the property would be eventually subdivided as it lay between other properties in the process of being developed. The property conveyed on June 3, 1966 to J. Earl McEwen and his son comprised 132 acres, less one-half acre and a house, and the purchase price was \$86,000.00 with certain terms of payment and was fully paid for in June, 1971. William Leslie Allum the vendor of the Allum property testified that his property had been listed





with realtors since 1965, that he had received a few offers and rejected them because the prices offered were insufficient. On October 15, 1969 the property was conveyed to J. Earl McEwen Limited for \$75,000.00 again upon certain terms as to payment and three years later the price was fully paid. William Eric Bradley, one of the executors of an estate owning the Bradley property, testified that it was necessary to sell the farm property to pay succession duties. This property was listed with a realtor and three offers including one from J. Earl McEwen were rejected as being insufficient in price. Mr. Bradley also stated that he was aware the property would probably be subdivided in the near future. On May 7, 1970 the property was conveyed to J. Earl McEwen Limited for \$100,000.00, of which sum \$70,000.00 was secured by a mortgage to the vendor for a term of two years. The evidence discloses that as of this last purchase, J. Earl McEwen in association with his son or through J. Earl McEwen Limited had invested approximately \$261,000.00 in acquiring approximately 298 acres in the second concession of Kingston Township. There was not the slightest hint of impropriety with respect to any of these purchases. They were made on the open market by willing vendors to willing purchasers and at prices dictated by the vendors.

These lands were used, at least in part, for agricultural purposes, the purchasers maintaining thereon at one point, forty-





four horses. Moreover, in June 1966 J. Earl McEwen purchased from William Ellerbeck for \$11,000.00 farm machinery, trucks and thirty-nine head of cattle. It appears that the land at such time carried an agricultural assessment. It is quite clear, however, that the agricultural value of the land did not warrant the investment, and that the true purpose of the purchase was speculative. In other words, the purchaser anticipated, as did the vendors, and two of the realtors involved who gave evidence before the Commission, that sooner or later the lands would be subdivided and developed at a profit.

In the event this occurred sooner than later. On January 15, 1971, J. Earl McEwen and Robert E. McEwen conveyed to Gerald Splinter Limited and G. Splinter and Sons Limited jointly, thirty acres of the Ellerbeck property for \$75,000.00 of which \$45,300.00 was secured by mortgage to the vendors, and discharged on February 8, 1973. On April 27, 1971 the balance of the Ellerbeck property was conveyed to Gerald Splinter and Hubert Splinter for \$408,000.00 of which \$378,000.00 was secured by mortgage to the vendors, to become due and payable on May 1, 1976. On April 3, 1973, J. Earl McEwen Limited conveyed to Gerald Splinter Limited and G. Splinter and Sons Limited, the Bradley property for \$584,000.00 of which \$64,000.00 was secured by a mortgage to the vendor to become due and





payable on April 1, 1981. On April 14, 1971, J. Earl McEwen Limited granted to G. Splinter and Sons Limited and Gerald Splinter Limited, jointly, an option to purchase the Allum property for \$371,828.00 at any time prior to May 1, 1974 and upon condition that the mortgage on the north 100 acres of the Ellerbeck property be paid down to one-half of the original principal sum.

The initiative for these sales came from the purchasers. Hubert Splinter who directly or through family companies, was involved in all four transactions testified that his father G. Splinter, his brother Gerald Splinter and himself had been builders in the Kingston area for some years. They had built seventy-two town-houses in Kingston for the Ontario Housing Corporation and also did a small subdivision north of the McEwen properties. The reason he and the companies mentioned became interested in the development of land in the Township he stated was "in order to survive in business to-day in our opinion we have to build large quantities of houses, not just a few scattered around here and there. We were never able to buy enough lots to satisfy the need for years, nor were we able to plan far enough in advance which is a necessity in the kind of business we are in." He further testified that he and his brother approached Mr. McEwen concerning the purchase





of thirty acres of the Ellerbeck property. There was no realtor involved and the land had not been advertised for sale. After the purchase a planner was engaged to plan the subdivision who recommended that sixteen further acres were required to develop a proper subdivision. The Splinters then returned to Mr. McEwen with this further proposal, but the latter expressed the view that this would so cut up the farm that he would prefer to sell it all, which as already recited was done. The transactions with respect to the Allum and Bradley properties followed. The witness made it clear that in none of the sales was any inducement offered by Mr. McEwen or any representations or promises made in any way related to the fact that Mr. McEwen was Reeve of Kingston Township and I accept this evidence completely. There was nothing improper with respect to these purchases and sales of land. The result in dollar terms of these transactions can be calculated on the assumption that the mortgages will be paid when due and the option exercised, and ignoring carrying charges, mortgage interest, legal fees, applicable taxes and inflation. On such basis an investment of \$261,000.00 will bring a return of \$1,438,828.00 or a gross profit of \$1,177,828.00.





IMPLICATIONS OF LAND INTEREST OF J. EARL McEWEN

This profit, if Mr. McEwen were a private citizen, would be calculated to arouse no emotion stronger than envy. But Mr. McEwen was not a private citizen, he was, and had been for some years, Reeve of Kingston Township. It is not surprising that these transactions in fact aroused suspicions, and supplied a plausible ground for allegations of conflict of interest. It required no great degree of perspicacity for those so inclined to recognize that the realization of this considerable profit depended upon the successful development over a period of time of the subdivisions envisaged by the Splinter groups and that such development conceivably could be facilitated in various ways by the authorities of Kingston Township.

It is beyond dispute that elected officials should not enter into any transactions whereby their private pecuniary interest might come into conflict with their public duty. The law in this respect provides for either complete avoidance or for declarations of interest. Politically, however, prudence dictates that an elected official should carefully avoid all transactions which can lend colour or countenance to the belief that the obligation to avoid conflict of interest is being ignored.





No matter how scrupulous Reeve McEwen might be in meticulously declaring an interest or in refraining from discussing or voting in strict conformity with the provisions of The Municipal Act or The Municipal Conflict of Interest Act, (and these matters will be discussed later) the possibility of certain others having a subconscious bias of some nature might arise. The Township staff or retained consultants in making recommendations, and the members of Council in making decisions affecting the lands in which Reeve McEwen to their knowledge had an interest, might, for example, subconsciously be unduly accommodating or conversely, unduly strict, in either event to the possible detriment of the public interest.

Insofar as these are contingent events which might arise from the land interests of Reeve McEwen, they pose, not legal questions to be answered by this Commission, but rather political questions subject only to political answers at the municipal level.





### EXPANSION OF WATER AND SEWAGE FACILITIES

A vast amount of evidence was received by the Commission relative to the proposed expansion of water and sewage facilities in the Township of Kingston, which it is unnecessary to review. The evidence was convincing and indeed denied by none of the participants in the enquiry, that an expansion of the facilities was urgently required. The difference arose as to the manner in which this urgent need should be met. The township had adopted a scheme which had received the approval of the Ontario Municipal Board. The opponents of the scheme so adopted objected on several grounds. First, they alleged that the Ontario Municipal Board erred in not permitting evidence to be given as to alternative schemes. At that time I held that it was not the function of the enquiry to sit in appeal on decisions of the Ontario Municipal Board, and that the evidence rejected by that Board was now relevant only if it related to any alleged violations or breaches of The Municipal Act or the Municipal Conflict of Interest Act, 1972.

The position of the complainants, extracted from the mass of evidence given, was that the urgent water shortage in the Township of Kingston could be met in two ways, by the purchase of water from the City of Kingston which had





an acknowledged surplus capacity; or the scheme actually adopted, of building a filtration plant for the sole needs and use of Kingston Township.

The complainants' second objection was that the scheme adopted would cost from one to two and one-half million dollars more than the alternative of purchasing water from the City of Kingston. There was evidence that the scheme adopted would be considerably more expensive than the alternative perhaps modified somewhat by future population growth. The position of the Township of Kingston was that the scheme assured control of the water supply by the municipality and would not be subject to decisions made from time to time by the City of Kingston. In my view, as I indicated during the hearing, the adoption of one scheme rather than another, irrespective of cost differential, was a political decision fully within the jurisdiction of the Township Council, subject to the powers of the Ontario Municipal Board. A review of that decision of the Township Council fell within the terms of reference of the Commission only if it was alleged that some improper motive affected the decision.

Such an allegation was made in the complainants' submission in the following form:

"The only logic which can be attributed to





Council's own action concerning the water plant is this; they wished to preserve and protect the monopoly enjoyed by the development areas in Concession II. It is no accident that the majority of the property for immediate development in that area was acquired either by Mr. McEwen or by Bayhill Development, the Company owned by Mr. Herrington and Mr. Smith."

The argument in support of this allegation was that the City of Kingston now has major watermains extending generally northward on Montreal Road, Division Street, Princess Street and to some extent on the other streets to the city limits. These mains could be extended into the north-easterly portion of the Township creating a large area for development on the northern periphery of the city. This same area, however, would be more difficult to service under the scheme adopted by the Township. Therefore development in that area would languish or be postponed until the area in Concession Two to the west of the City of Kingston was fully developed. In the area of Concession Two certain lands were subject to personal interests of Mr. McEwen, Mr. Herrington and Mr. Smith who were respectively the Reeve, the solicitor and the consulting engineer of the Township of Kingston. Accordingly, it is alleged, they had both the opportunity and the motive for rejecting the proposal to purchase water from the City of Kingston and promoting the scheme actually adopted.

Other factors being equal this could be a tenable hypothesis. The evidence discloses, however, that other factors were not equal; that while a water supply is a





necessity for development it is not necessarily decisive. There was introduced in evidence a study made in 1959 for the Township of Kingston by Dr. J. Howard Richards at that time head of the Geography Department at the Royal Military College. He reported that physical features, including bedrock and surface materials, were largely responsible for the concentration of transportation routes and population in the southern part of the municipality. He reported that the southerly portion of the Township lying to the west of the City of Kingston was the area in which "suburban growth has been outstanding" and that "the south has not only demonstrated its attraction to the subdivider and suburbanite but remains the most attractive area." He further reports "a number of factors have been influential in making this the preferred area beyond the city, for housing. The first is the complete continuity with the city" ... "The two east-west highways have been outstanding in their influence; Highway 33 (Bath Road), assisted by Front or Airport Road, has directed the suburban movement to the western border of the Township, while Highway 2 has been effective in producing changes which have led to special forms of commercial activities and to both ribbon suburban and sub-division housing." He further reports "There is certainly a fair degree of correlation between the disposition of major suburbs and the occurrence of deeper soil cover. One may examine any





of the larger subdivisions and find that this association holds true" ... "The attractive features here include low costs of excavating, of 'subdividing' and of servicing (road and other) as compared with other sections." The report further mentions proximity to Lake Ontario and to the employment opportunities in certain plants in the Township and to the west in Ernestown as factors in attracting population to the area.

This report was placed in evidence by Mr. George Muirhead, Director of Planning and Urban Renewal for the City of Kingston. In virtue of his position he was generally familiar with the development which had occurred in the Kingston Planning Area comprised of three municipalities, the City of Kingston, and the two adjacent townships of Kingston and Pittsburgh. He agreed that the actual development in Kingston Township had been "pretty well" consistent with the forecast made in the Richards report of 1959.

Between 1959 and the date of the enquiry there have been numerous studies made and plans prepared and official plan amendments proposed or formally completed. It would be tedious in the extreme to attempt to summarize them. It is sufficient to say that without exception they represent the same opinion, namely, that the southerly portion of the Township of Kingston, lying to the west of the City of





Kingston and extending westerly to Collins Bay is the primary and attractive area for urban development.

As to the sewer proposal, little need be added. The present sewage treatment plant is operating in excess of capacity, and all parties agreed that a new plant is urgently required. The siting of the sewer mains is dependent, of course, on the water mains on the principle of what goes up must come down. The two services are necessarily inseparable and the same considerations apply.

Mr. McEwen participated in the discussions and perhaps voted on the resolutions and by-laws relating to the water and sewer proposals. He was entitled to do so in accordance with the laws recited in the following section.

There is no evidence of a conflict of interest in respect to the proposals for expanding the water and sewer facilities.



OFFICIAL PLAN AMENDMENTS NUMBER 4 AND NUMBER 7

A mass of evidence was placed before the Commission relating to amendments number 4 and number 7 to the Official Plan of Kingston Township. No useful purpose would be served by a detailed review; it is sufficient to say that the amendments followed the normal lengthy route from consultants and planners through the Planning Board, through various provincial agencies and were eventually adopted by by-law of the Township Council. The complaint made is that Mr. McEwen voted to adopt these two amendments and declared no interest, although the effect of the amendments would be to change the designated uses to which the lands in concession two, in which he had an interest, could be put. The evidence appears clear that Mr. McEwen did participate and vote with respect to each by-law and that the effect of the Official Plan amendments would permit what is known as a "higher use" of the lands in which Mr. McEwen had an interest and thereby increase the value of the lands.

Accepting these facts, has Mr. McEwen placed himself, as a matter of law, in a position of conflict of interest? Has he "any pecuniary interest direct or indirect ... in any matter in which the council ... is concerned."? The law





is quite clear and has been for some centuries that the "interest or bias which disqualifies is one which exists separate and distinct as to the individual in the particular case - not merely some interest possessed in common with his fellows or the public generally." (Re L'Abbé and the Corporation of Blind River (1904) 7 O.L.R. 230). Again in Elliott v City of St. Catherines, 1909, 18 O.L.R. 57 it was held that a member of the City Council is not disqualified from voting on a proposed by-law to construct a sewer on a certain street merely because he owns property fronting on the street which gives him a large interest in the proposed drainage. It was further held that although having an interest it was one not different from the community in general, and that such a common interest is one of kind not of degree.

This is a matter of plain common sense as may be illustrated by the example of a Municipal Public Utilities Commission voting to lower the electricity rate. Obviously each member of the Commission has a pecuniary interest of the same nature as the other users of the utility but by reason of different needs not necessarily in the same degree. The law could not impugn such a vote. To do so a particular interest different in kind must be found as in Re Wanamaker and Patterson 37 D.L.R. (3d) 583, where Patterson, a mayor of a municipality, voted on matters relating to access to a





property upon which he operated a coin laundry. The court found that "Patterson's interest is not shared by the ratepayers if such a division of communal interest is accepted. His pecuniary interest is in the profit of his coin laundry, a matter which, at most, he could only share with his landlord." While the law is certain, it is a matter of fact, in each instance whether an interest different in kind exists.

The Official Plan amendments in Kingston Township, according to the evidence, dealt with approximately eight thousand acres, including approximately three hundred acres in which Mr. McEwen had an interest. The total acreage was naturally designated for various uses, dependent upon various factors such as location, soil and ease of servicing, amongst others. There is no compelling evidence to show that the approximately three hundred in which Mr. McEwen was interested received treatment different in kind from the others. It may well be that the adoption of these amendments will result in increased values in Kingston Township, but that prospect is probable for other lands as well as those of interest to Mr. McEwen. To adopt the words of Mr. Justice Stark in Re Blustein and Borough of North York, O.R. 1967 604 "Indeed the whole purpose for the adoption of this type of development plan is surely to increase the value whether economic, social or cultural of the inhabitants of the area."



Mr. McEwen does have an interest different in degree from some, but not all, others in the area affected by the Official Plan amendments. This arises from the fact that due primarily to location, the land in which he has an interest, is ripe for development. Other lands similarly designated have not as yet attained that state. I cannot report that he has an interest different in kind which would place him in a position of conflict of interest in voting in support of the amendments to the Official Plan.





MINUTES OF COUNCIL, RECORDING OF DECLARATIONS  
OF INTEREST AND VOTING PROCEDURES.

It is fair to say that the form and content of the minutes of the meetings of the Kingston Township Council were such that on many issues raised it was impossible to arrive at a definite conclusion as to what may have occurred or had been discussed at such meetings. The minutes for the years 1970 to 1973 inclusive were produced. They disclose a uniform pattern. Mr. Douglas A. Gordon, the Clerk, was called as a witness and gave evidence as to the method he employed in recording the minutes. It appears that he had resolution forms upon which would be written or typed the wording of a resolution and signed by the mover and seconder thereof. The resolution form so completed was handed to the Reeve and either with or without debate was voted upon. If the resolution was defeated, the form was apparently discarded or in any event did not appear in any fashion in the minutes. This witness also disclosed that after a motion adopting the minutes of the previous meeting it normally followed that correspondence addressed to the Council was dealt with but that fact was not recorded in the minutes either. The witness was asked if directions





were given to answer the letters or to file them would such action be recorded in the minutes and he replied that they would not be unless such direction was in the form of a resolution. He further testified that delegations appearing from time to time before the Council were not referred to in the minutes. This witness further testified that no record was made of any debate upon resolutions even if the resolutions were adopted. As already noted defeated resolutions were not mentioned nor consequently any debate upon them. In short, the minutes set out only resolutions which were adopted, although even the words "adopted" or "carried" did not in fact appear. In the four years reviewed there appeared no amendments to motions. Mr. McEwen explained in evidence that the procedure was, in general, to discuss a matter and when a consensus was obtained to formulate such consensus in a motion. If no consensus was arrived at the subject was dropped or laid over, and no reference appeared in the minutes that the subject had been discussed. The rationale for this procedure was explained by both Mr. McEwen and Mr. Gordon. Section 215(1) of The Municipal Act provides that "the Council shall appoint a Clerk whose duty it is (a) to duly record in a book, without note or comment, all resolutions, decisions and other proceedings of the Council." Both Mr. McEwen and Mr. Gordon interpreted "without note or comment" to mean that any matter which did not result





in an adopted motion, no matter how debated or discussed, was to be omitted. Mr. Gordon further explained that he merely followed this procedure as being established by his predecessor in office. When asked if the minutes accurately reflect, to a taxpayer who reads them, what actually happened he replied "I would think the taxpayer would have to be at the meeting to thoroughly understand what went on at the meeting."

Even more disturbing is the procedure followed with respect to disclosure of interest. Section 199(5) of The Municipal Act provides explicitly:

"Every disclosure at a meeting shall be recorded in the minutes of the meeting by the clerk of the municipality or secretary of the local board, as the case may be."

Mr. Gordon testified, however, "I don't make notes concerning declaration of interest unless I am instructed to do so." This practice was confirmed by Mr. McEwen who stated "The Clerk is the one who controls the wording that goes into the minute book. He has received his information mainly from written motions moved and seconded by members of Council. Other than that he doesn't enter any minutes in the minute book unless asked to do so in a particular instance, such as my request to note that I was stating that any interest that I had in the Splinters would be as owner of a mortgage."





That this in fact occurred on one occasion is corroborated by Mr. Milligan who testified that he was present at a Council meeting on August 1, 1972 when a matter arose with respect to which he heard Mr. McEwen declare an interest. A copy of the minutes of that meeting, filed as Exhibit 92, does not record that disclosure. When asked for an explanation, Mr. McEwen replied "I guess I or members of Council neglected to ask the Clerk to make a note."

It is obvious that the procedure followed in recording the proceedings of the Council were both inadequate and incorrect. It is also apparent that the Clerk was directed in this procedure by the Council. In this context one other error must be reported. Mr. Gordon, examined by Commission Counsel, testified:

"Q. Now, even in that event where there was a declaration of interest as I understand it the Reeve would not vote except in those two circumstances we indicated before namely to break a tie or to establish a quorum?

A. Yes.

Q. I am not sure whether you are well enough informed to answer this but do you know of a situation where the Reeve did make a declaration of personal interest and then voted simply to break a tie vote or to form a quorum?

A. I believe I recall it happening with the just-mentioned By-law 73-18."





The minutes of the meeting of Council held on May 18, 1973, disclose that by-law 73-18 was given first, second and third readings. The minutes first record the absence of Councillor Girling and continue "Note - Letters were received from Reeve McEwen and Councillor Beeman concerning By-law 73-18." The evidence indicates that these letters were disclosures of interest and that Councillor Beeman would not vote. Mr. McEwen did vote to constitute a quorum, apparently under the terms of section 191(2) of The Municipal Act which provides:

"Where a council consists of only five members, the concurrent vote of at least three of them is necessary to carry any resolution or other measure."

Mr. McEwen in evidence put it "The only times I would vote would be if there was a tie or a recorded vote and I was instructed a long time ago by the Clerk when there was a recorded vote called if I was sitting at a meeting, I must vote. Mr. Porter advised me yesterday again that on a recorded vote that is not proper." This was subsequently clarified by his Counsel in these words: "I think their understanding is that you had to have three votes before a resolution could pass. This is what their understanding is."

It is obvious that section 191(2) of The Municipal Act requires the concurrent votes of three members of a five



member council to carry a resolution; it is equally obvious that section 199(1) of the Act prohibits any of these three under any circumstances from voting if he has a pecuniary interest in the matter under consideration.





ALLEGED FAILURE OF EARL McEWEN TO DECLARE  
AN INTEREST CONCERNING KEN AND RAY LAND  
EXPROPRIATIONS

Mr. J. Earl McEwen as Reeve of the Township was also, as indicated, a member of the Frontenac County Council. In the year 1967 he was Chairman of the County Highways Committee. On August 9, 1967 a meeting of that Committee was held at which Mr. McEwen presided and a motion was adopted "that Ken and Ray be paid \$3,000.00 for property at the intersection of Westbrooke Road and 33 Highway as payment in full." This was pursuant to certain expropriation proceedings which had been properly taken by the County. It is a matter of common ground that Mr. McEwen had an interest in the business known as Ken and Ray. It is alleged that Mr. McEwen acted in contravention of section 199 of The Municipal Act. This provides that if a member of a council or local board has any pecuniary interest in any matter in which the council or local board is concerned and is present at a meeting of the council or local board at which the matter is the subject of consideration he shall as soon as practicable after the commencement of the meeting disclose his interest. The





minutes of that meeting have been filed as exhibit 185 and disclose no declaration of interest. The definition of "local board" is contained in section 1(d) of The Department of Municipal Affairs Act, R.S.O. 1970, Chapter 118 and includes a "committee" established or exercising any power or authority under any general or special act with respect to any of the affairs or purposes including school purposes of a municipality." It seems obvious that the County Highways Committee of the County of Frontenac would fall within that definition and that Mr. McEwen was obligated to comply with section 199 of the Municipal Act. As noted, the minutes fail to disclose that he had so complied.

Mr. John E. Taylor, the Clerk of the County of Frontenac since November 19th, 1959, gave evidence. He stated that it is not his custom to record in the minutes of a meeting declarations of interest made unless he is instructed to do so. As he stated it "If I am not told differently, I am to record the minutes without note or comment and this is the practice, and this is what I do. If I am instructed by resolution to do otherwise I do so." I asked this witness if Mr. McEwen had stated an interest and refrained from voting or taking part in the debate would the clerk not have



recorded it and the answer was "no." This is apparently a misconstruction of section 215(1) (a) of The Municipal Act which states that it is the duty of the clerk "to truly record in a book, without note or comment, all resolutions, decisions and other proceedings of the council." Mr. Taylor was, prior to his present position, the Clerk of the Township of Kingston where as it appears in this report the same interpretation of the clerk's duty in regard to minutes prevailed.

In cross-examination Mr. Taylor stated it is possible that Mr. McEwen had declared an interest although he could not remember it but he remembered that he had done so on several other occasions. That the method of keeping the minutes is open to obvious objections is beyond question but in my view such neglect cannot excuse a member of council ignoring the plain provisions of section 199 of The Municipal Act.





ALLEGED MISUSE OF OFFICE BY EARL McEWEN

In the course of the enquiry certain incidents were related which carried the suggestion that Mr. McEwen used his office of Reeve of the Township of Kingston improperly for personal gain. The first deals with what is known as the Svendsen Garage. In 1966 Mr. McEwen purchased lot 12, Plan 382 on the north side of the Front Road, at or near the T intersection with Days Road for \$14,000.00. In 1969 he optioned this parcel to Svendsen Bros. Automotive Limited for \$35,000.00 and the sale was subsequently completed. During the option period the purchaser applied to the Township for a building permit to erect a garage and a permit was issued. The building was subsequently erected and is still in use as a garage. The transaction is attacked on several grounds. It is alleged that under section 12 of by-law 749 only an owner or purchaser under registered agreement for sale may receive a building permit and that Svendsen Bros. Automotive Limited was not in either category, to the necessary knowledge of Mr. McEwen who presided at the meeting approving the issuance of





the permit. This allegation is correct but whether the procedure was due to inefficiency or some other reason is impossible to determine. Mr. McEwen states that he indicated his interest in the matter when the permit was issued and refrained from voting. The minutes of the meeting do not record any such action but in view of the improper methods of recording minutes employed this is not surprising. Finally there is the question of the correct zoning designation of lot 12, Plan 382. At the time of the sale and issuance of the building permit, the second amendment to the Official Plan was in effect and Schedule "B" thereto designated this parcel of land as commercial. However, the zoning by-law 749 then in effect, designates this parcel as residential. It is obvious that as a matter of law, it is the zoning by-law and not the Official Plan which governs, and consequently the Council erred in issuing the building permit. It may well be that it did so innocently in that the members believed that the provisions of the Official Plan were paramount. On the whole the evidence suggests incompetence rather than a sinister motive. At the same time the conjunction of the sizeable profit on the sale, Mr. McEwen's position





as Reeve, and the irregularities in the issuance of the permit were all calculated to raise suspicions of impropriety.

A further allegation was made of improper use of his position as Reeve of Kingston Township with respect to an incident in 1965 at Kingston Airport. The airport, owned by the Federal Government and leased to the City of Kingston, is located in Kingston Township. It is governed by a commission consisting of nominees of the City of Kingston and Kingston Township, one of whom from time to time was Mr. McEwen. The actual management of the airport, at the time, was the responsibility of a limited company headed by a Mr. MacKay, which employed a resident caretaker, a Mr. Wakelin. The latter was responsible for keeping the airport, comprising some three hundred and fifty acres, free of weeds and grass, particularly in the vicinity of the runways. The year 1965 was a dry year and Ronald Asselstine, a farmer living at Hartington, some twenty miles from Kingston, was in urgent need of hay for his one hundred head of cattle. Hearing that hay was available at the airport he interviewed the caretaker. Mr. Asselstine testified:





I asked him if he wanted somebody to take the hay off. He said yes. I said, well, what did they want for it? He said, I am looking for somebody to take it off. If you will take it off and clear it up and clean the weeds up there is no charge."

On returning a week later to commence haying he claims he was told by the caretaker that he must see Mr. McEwen, that he did so, that Mr. McEwen claimed to have the authority to crop the hay, that Mr. McEwen suggested that Mr. Asselstine could have one-half the crop in return for doing all the cutting and baling. To this proposal Mr. Asselstine agreed. The caretaker, Mr. Wakelin, was not in attendance but filed an affidavit denying that he had said that Mr. Asselstine must see Mr. McEwen. He swore that "As far as I knew Mr. McEwen never had anything to do with the hay. I never spoke to Mr. McEwen about hay. As far as I know Mr. McEwen never got any hay from the airport."

Mr. McEwen testified that he was, in 1965, renting a property on which he kept livestock immediately west of the airport and had need of hay.





He either by word of mouth or seeing Asselstine's advertisement seeking hay, communicated with him and arranged that, in return for cutting the hay Asselstine would get sixty per cent of the crop and Mr. McEwen the balance.

Whichever version of the crop sharing agreement is accepted, the question remains as to what right or title Mr. McEwen had to make such agreement. His evidence on this point is as follows:

"THE COMMISSIONER: You have already stated that you did not make your arrangements with Mr. MacKay and Mr. MacKay says you did not make it with him. You said that you made it with Wakelin and Wakelin denies that you made it with him. This is the nub of the story. Now, who in fact did you make it with?

THE WITNESS: Sir, I think I mentioned I was not quite sure who I made it with. It must have been with Mr. Wakelin.

THE COMMISSIONER: That is what you said but now



Mr. Wakelin denies it, at least the affidavit says so.

THE WITNESS: Well, I tried very hard to remember who I made the arrangements with, for the last couple of days I have tried to remember but I have not been able to follow it up. I have contacted the Clerk of the City of Kingston in an effort to find out whether I made arrangements through his office. I really don't remember who I made the arrangement with except it would be with, I imagine, the managers of the airport.

THE COMMISSIONER: That would be Mr. MacKay or Mr. Wakelin. I am in the position that both of them denies that they ever made the arrangement.

THE WITNESS: Well, sir, someone made the arrangement and we cut the hay."

While the matter is not free from doubt, the impression left by the evidence is that Mr. McEwen did use his position to secure hay from the airport for his own benefit and at no cost.

In the course of the hearings reference was made to a sale of a parcel of land by Mr. McEwen to Cobourg Construction Company Limited, which company held a contract with Kingston Township, for construction work amounting to approximately \$300,000.00. There is absolutely no evidence that Mr. McEwen was improperly involved with respect to this sale. On the contrary, the company needing open yard





storage for concrete aggregate, cement and dynamite sought a local real estate agent, outlined the requirements, particularly with respect to the storage of dynamite distant from residences, highways and railways, and bought the property through the agent, who held it on an open listing.





ALLEGATIONS CONCERNING J. G. SANDS

Mr. J. G. Sands was a member of the Council of the Township of Kingston. His wife had owned for some years lands in lots 14 and 15, Concession Three of the Township, which were apparently largely undeveloped. The extent of her land is not explicitly stated but from the maps submitted appears not to exceed one hundred acres. The Township is proposing the installation of a trunk sewer that would proceed northerly along Gardiner's Road and then easterly along Highway Number two, a proposal contained in the sewer report prepared by R. V. Anderson and Associates. This trunk sewer would make possible the development of the lands owned by Mrs. Sands. It is the allegation of the complainants that it would uniquely benefit her lands, and that J. G. Sands in voting for the proposed sewer placed himself in a position of conflict of interest. Mr. Barry Miller, an engineer with the firm of Smith & Associates, who acted as consultants to the Township, testified that the trunk sewer would, in fact, service twenty-five



hundred acres. I accept this evidence completely. It is obvious that the indirect interest of Mrs. Sands was not unique but was one common to all the land owners in the area to be serviced and that J. G. Sands was in no way in a position of conflict of interest.





ALLEGATIONS CONCERNING ARTHUR KEMP

An allegation of conflict of interest was made with respect to Arthur Kemp, a member of the Township Council. It was utterly without foundation. It is reported here as an extreme example of the difficulties which frequently arose by reason of the complainants lack of Counsel. The allegation was expressed in evidence by Mr. Milligan in these words:

"The gist of the allegation is that during the time that this property was under expropriation by the Cataraqui Regional Conservation Authority, or was being taken to the Land Compensation Board, that Mr. Kemp took part in motions, resolutions and decisions on the Council and Planning Board which he was a member of at that time. These decisions had they been implemented could have increased the value of property and thus the amount of money awarded to him in the Judgment under the Expropriation."

Mr. Kemp had an interest in certain lands in the Township which were expropriated by the Cataraqui Regional Conservation Authority, the plan of expropriation being registered on March 10, 1970 as number 193700. The meetings at which Mr. Kemp voted with respect to planning matters were held on April 13, 1970, May 5, 1970 and July 7, 1970. The only interest he then had in the lands in question was the





amount of compensation he would be paid, a matter then before the Land Compensation Board. Compensation is determined on the value of the land at the date of expropriation. It is impossible that such value could be increased by any subsequent action of the Municipal Council. It is only fair to Mr. Milligan to report that when this was explained he said "I very much regret that it came this far and I hope Mr. Kemp will accept my apologies."



ALLEGATIONS CONCERNING CLIFFORD ALLEN

Mr. Allen is a farmer in the Township of Kingston, has from time to time been an elected member of the School Board, and from 1966 to the date of the hearing, except for the year 1968, had been an appointed member of the Planning Board for the Township of Kingston. With five others he incorporated a company known as Hemlock Park Farmers Co-operative Limited, which company purchased a substantial amount of land, in the area known as Glenburnie, on Montreal Road north of Highway 401. Eventually in 1968 Mr. Allen became the effective owner of the company, which then held about three hundred acres of land.

The first allegation is that Mr. Allen made a number of applications to the Committee of Adjustment for the Township of Kingston for approval of land severances, the land so severed to be used for purposes inconsistent with the Official Plan. The evidence indicates that a number of the severances were justified, such as extending the area around a school, enlarging an existing built-on lot to provide room for a garage and for the disposal of a parcel cut off





by a hydro right-of-way expropriation. The majority were for residential purposes. The decisions of the Committee of Adjustment in every instance were, as required, reported to the Ministry, and the latter on two occasions successfully appealed the decision. This raises at least the inference that those not appealed were found unobjectionable by the Ministry. The essence of the allegations is that as a member of the Planning Board Mr. Allen should have refrained applying to the Committee of Adjustment, for a severance inconsistent with the Official Plan. This does not seem well founded as the very purpose of the Committee of Adjustment is to consider, and if deemed proper, to permit minor variations from the Official Plan. I cannot see that Mr. Allen, in virtue of his membership on the Planning Board is deprived of the right to apply enjoyed by the rest of the citizens of the Township. Mr. Allen might well, in his personal capacity, have been, and in the two cases appealed was held to be wrong as to what constituted a proper case of severance. Nevertheless he was entitled to apply and it was the duty of the Committee of Adjustment to make an appropriate decision. Mr. Allen was not, of course, a member of the Committee of Adjustment, and that Committee was appointed by the Township Council, not





the Planning Board. There is no evidence that Mr. Allen used any improper influence or that his applications were treated differently from those of other applicants.

The second allegation deals with a matter considered by the Planning Board. Municipal Planning Consultants, retained by the Township, submitted two alternative land concepts to the Planning Board for comment. The concept designated various areas for various uses, two of which were for Estate use and Hamlet use. Replying by letter dated June 1, 1972, the Planning Board suggested that the Glenburnie Area south and west of Montreal Street "should be considered" for Estate designation and "should be looked at as a possibility" for Hamlet designation. With respect to Estate designations the letter further stated "We feel more work must be done in determining locations that might be suitable and would recommend an on site inspection of certain areas with you the next time you are down."

Mr. Allen was not present at the meeting at which the letter was approved for transmission to the consultants. It is alleged that being present at the succeeding meeting he should have declared an



interest as he owned land in the Glenburnie area which would be increased in value if the suggested designations were adopted. This raises a question as to the nature of this exchange of correspondence, which appears in the cross-examination of Mr.

Milligan:

" Q. Now, would it be fair to say that those two letters are exploratory, with a view to obtaining recommendations from these Municipal Planning Consultants?

A. Yes, this was the reason for it, yes.

Q. I suggest to you that the proper time for a declaration would be when the Planning Board was making some recommendation to Council, would you agree with that?

A. I think that one could take that position. I don't agree with it, but I can understand how one would take that position."

The letters were, as agreed, exploratory, and constituted a fair sample of the type of dialogue both common and necessary in policy making. Do they constitute a matter in which the Board is concerned which require a declaration of interest under section 199 of The Municipal Act? While the matter is not free from doubt, upon the particular facts here I conclude that no declaration would be necessary until





some formal action were taken by the Planning Board. Further, there is once again a distinction to be made between kind and degree of interest. The tentative plans discussed took in a wide area, some eight thousand acres for Estate designation, and six locations as potential Hamlet designations. While Mr. Allen may well benefit if such action as suggested is eventually taken, the benefit is similar in kind to the other landowners in the same category. I cannot report that he placed himself in a position of conflict of interest.





ALLEGATIONS CONCERNING PHILIP D. QUINTIN

Mr. Quintin, a lawyer practising in the City of Kingston, was a member of the Township Council for four years, 1969 to 1972 inclusive, and for at least two of those years was a member of the Township Planning Board. His practice was almost entirely devoted to conveyancing, and during the four years he acted on conveyancing matters from time to time for G. Splinter and Sons Ltd., and Auden Park Developments Ltd., two developers operating in the Township. This involved on occasion, applications to the Township for the reconveyance of certain lots held by the Township as security for the due performance by the developer of the subdivision agreement. These reconveyances were made on the certificate of the Township engineer and approval by Council was routine. The evidence is quite clear that Mr. Quintin was not on a general retainer as solicitor for either of the companies mentioned, but employed when occasion arose, with respect to the individual transaction. It is quite true, under



these circumstances, that if the subdivisions of these two companies prospered he might anticipate continued conveyancing business. The complainants advance the argument that Mr. Quintin, being continuously associated as a conveyancing solicitor, has an indirect pecuniary interest in every matter relating to these companies which came before the Council or Planning Board, and consequently should have declared an interest and refrained from participation and voting in respect to such matters. I can discover no authority for this proposition.

If, however, he was retained by either of these companies or any other client, with respect to a specific matter which came before the Council or the Planning Board it was mandatory under section 199 of The Municipal Act that he declare an interest, refrain from participation and abstain from voting.

Evidence that such situations in fact arose is extremely meagre, and is obscured by the complainants' erroneous view of the solicitor client relationship already mentioned. Mr. Quintin himself could not recall specifically on what occasions and with respect to what matters he declared a pecuniary interest and either voted or refrained from voting. In some





instances the minutes disclose that he was a mover or seconder of a resolution or in view of the necessity of a concurrent vote of three members, implied that he must have voted. Most, if not all, of these motions were a matter of interest only if the already rejected view of the solicitor client relationship is accepted. In essence the situation is expressed in the evidence of Mr. Quintin:

"THE WITNESS: Obviously I did not refrain from voting at all times but I did declare my connection with these matters at all times.

THE COMMISSIONER: Then, do you know of any minute during the two years we are talking about where such a declaration has been recorded?

THE WITNESS: No, sir. As far as I know it was not the custom to record it."

I can only report on the evidence that Mr. Quintin may have voted contrary to section 199 of The Municipal Act and that any declaration of interest made was not recorded in the minutes.





Mr. Quintin during his term on Council made certain investments in land. In November 1971 he bought nine out of thirty-five to forty lots in the Lawrence Park development owned by a company known as Yevrah and sold them in March 1972. During that interval two resolutions appear in the minutes one moved and one seconded by Mr. Quintin. The first agreed to Yevrah retaining the Township consulting engineer to design certain works as provided in the subdivision agreement. The second requested Yevrah to install a water meter device in the main line to meter all water to the development. It is ludicrous to suggest that ownership of nine lots in the subdivision created direct pecuniary interest in these motions.

Mr. Quintin on November 27, 1971 agreed to buy from Yevrah fifty acres of undeveloped land to the north of Lawrence Park for a substantial sum. On or about December 16, 1971 he assigned this agreement to the Splinter Company for the same price. The somewhat involved financing arrangements ended with Quintin holding a second mortgage on this property which he still held when he ceased to be a member of Council.



The submission of the complainants, as I understand it, appears to be that if the Yevrah subdivision progressed satisfactorily, the fifty acre parcel to the north would appreciate in value, thereby ensuring the security of the \$22,000.00 second mortgage held by Mr. Quintin. On this hypothesis each resolution of Council dealing with Yevrah throughout 1972 is cited as one in which Mr. Quintin had a direct pecuniary interest, and accordingly should have declared an interest and refrained from voting. Two examples may be quoted as typical of the resolutions cited:

"that Council agrees with Campbell Smith Ltd. that Taggart Construction of Ottawa be awarded contract for internal services in Yevrah Development."

"that O.H.C. and Yevrah be granted permission to lay curbs and base asphalt upon the condition that they will be responsible for the cost of any remedial measures necessary to maintain roads in satisfactory condition."

While this hypothesis has a superficial plausibility I would report that I can find no reported authority for such a remote interest being found to be within the terms of section 199 of The Municipal Act.





Mr. Quintin held a twelve per cent interest in a race track company known as Frontenac Downs. On February 16, 1971 a resolution appears in the Council minutes

"that Council agrees to the construction of Harness Race Track and Buildings on the sight (sic) proposed and submitted to Council"

Mr. Quintin was present at this meeting but the minutes do not disclose if he voted on this resolution or if he declared an interest.

This motion appears to be of no significance or value, as the issuance or approval of building permits was not a function of the Township Council, but rather that of the building inspector, acting in accordance with the appropriate by-laws. The matter apparently came before Council as one of information rather than action despite the wording of the resolution. As a nullity there can be no question raised as to Mr. Quintin being in any position of conflict and I so report.





BAYHILL DEVELOPMENT LIMITED

Bayhill Development Limited was formed in February 1968, two of the principals being James R. Herrington and Donald C. Smith. Mr. Herrington is a solicitor practising in Kingston and for some years has provided legal advice to the Township when requested, although he is not on a regular retainer. Mr. Smith, a professional engineer practising in Kingston, was retained by the Township as a consultant as required but was not on a regular retainer.

Bayhill Development Limited was formed to subdivide and develop an area of land in lots 4, 5, 6 and 7, Concession Two of the Township which had been acquired principally by Mr. Herrington and Mr. Smith between 1963 and 1968.

In 1966 the Township realized the possibility of a conflict of interest and sought the advice of the then Minister of Municipal Affairs, in a letter which read:

"Dear Sir: Council has requested that I write to you and ask for your advice on the following matter:  
'The Township Solicitor and the Township Consulting Engineer and



another person have purchased a large tract of land and intend to develop it as a subdivision. In view of this the Township Planning Board has consulted another consulting engineer in this matter. The Council is interested in determining if in your opinion this constitutes sufficient protection for the Township?"

To this the Minister replied:

"This will acknowledge your letter of March 23rd concerning the acquisition of a tract of land by the Township Solicitor and the Township Consulting Engineer. I take it that the land is situate in the Township of Kingston. I note that the Township has retained the services of another consulting engineer and presumably as and when any matters arise in connection with the subdivision it would not be the wish of the present Township Solicitor to act on behalf of the Township so that it would be necessary for any legal matters pertaining to the subdivision to secure the services of another solicitor."

Subsequent to this correspondence the Township very properly retained another consulting engineer and another solicitor in all matters relating to Bayhill Development Limited. It is now alleged that this was not sufficient in that Mr. Herrington and in particular Mr. Smith were still retained in matters relating to the general urban development and planning in the Township, and could so direct these matters as to benefit Bayhill Development Limited.





It was alleged that they did so with respect to the water and sewer proposals, an allegation which has already been rejected. There is no evidence whatsoever that either of these men did direct the planning or development in the Township for the particular benefit of Bayhill Development Limited or to the detriment of the Township or other developers. As a matter of prudence, however, it would have been preferable for the Township to have retained other advisors in a time of rapid urbanization, and thereby avoided any suspicions however ill founded.

It is alleged that the Township failed to fully enforce the provisions of the standard subdivision agreement between Bayhill Developments Limited and the Township. That agreement provides in part :

"It is the intent of this agreement that the Township shall ~~incur~~ no expense for services in the development of sub-divisions. Where the sewer outlets and water mains are not available immediately adjacent to the sub-divisions, the sub-divider shall pay the full cost of extending sewers and water mains to the area."





"If as the subdivison develops further drainage works either upon the lands shown on the said draft plan or beyond the boundaries thereof should be necessary, as to which this Township shall be the sole judge, the owner agrees to provide the same forthwith as required by the Township."

Further draunage works were found to be necessary beyond the boundaries, in the form of a storm sewer which would have to pass under two township roads. The sewer passed through an adjacent older subdivision, Hillview, which had contributed to the flooding which required the storm sewer. Bayhill Development Limited eventually installed the sewer at a cost of \$40,000.00 but felt that some contribution should come from the Township, which was now relieved of the flooding problem in the Hillview area. Eventually the Township assumed the cost only of the two road crossings which amounted to some \$3,000.00 less provincial subsidy. This appears to be eminently reasonable and does not constitute a failure to enforce a contract and I so report.

It is even more reasonable in the light of a further allegation concerning the extension westerly to the boundary of the Bayhill Development Limited property of a road known as Development Road.



This extension was originally used as an access road to the subdivision by heavy construction machinery. It was paid for and partly paved by Bayhill but conveyed to the Township with a one foot reserve at either end and either side. The Township did spend money on this road, but also owned the lands on either side and were in position, on the sale of those lands, to recover costs, if they so desired, from the purchasers. In essence the Township obtained a benefit from Bayhill Development Limited.

A further allegation was made which involved both the Township and Bayhill Development Limited in the matter of the issuance of building permits. The facts briefly are that in one phase of the Bayhill subdivision, a number of building permits were issued between May 15, 1972 and June 13, 1972, the draft plan of subdivision was signed by the Minister on June 20, 1972 and registered in the registry office on June 26, 1972. In a succeeding phase, building permits were issued





between May 16, 1973 and May 30, 1973, the draft plan signed by the Minister on May 31, 1973 and registered in the Registry Office on June 11, 1973.

These permits were issued to various builders who had entered into some type of agreement to buy certain lots from Bayhill Development Limited. The action by Bayhill in agreeing to sell is alleged to be contrary to section 34(1) of The Planning Act, R.S.O. 1970, Chapter 349, which reads:

"Every person who subdivides and offers for sale, agrees to sell or sells land by a description in accordance with an unregistered plan of subdivision is guilty of an offence and on summary conviction is liable to a fine of not more than \$500."

These permits were also issued contrary to the provisions of the Township by-law. They were issued in 1972 by the building inspector, without the knowledge of the Council, and in 1973 on the direction of Council.

The reasons advanced on behalf of the Township were in general that there was high unemployment in the building industry in the area, that the weather was exceptionally suitable for early starting in construction and that the builders had





made committments to purchasers for occupancy before September 1st.

I would report that these building permits were improperly issued in contravention of the legislation and by-law.

One final allegation can be disposed of, namely, that Bayhill Development Limited purchased a parcel of land in the Industrial Park at less than that authorized and charged to other buyers, the inference being that this was owing to the alleged preferred position of Mr. Herrington and Mr. Smith. The facts are that Hemlock Park Dairy Limited had agreed to buy from the Township a one acre lot in the Industrial Park for \$1,500.00. Another purchaser appeared who would pay \$2,500.00 for the lot. Hemlock Park Dairy Limited agreed to waive its purchase if it could buy a lot in the new section of the Industrial Park for \$2,500.00. By the time it was prepared to proceed land values had risen and it agreed to pay \$4,100.00 for 1.6 acres of which 40% was unusable for building because of a sewer easement. I find nothing improper in this transaction and would so report.



COMMITTEE OF ADJUSTMENT

A considerable body of testimony was directed to the matter of the Committee of Adjustment of the Township. This body was subject to legislative guidelines, as well as ones supplied by the Planning Board of the Township. The evidence was that the work of the Committee was unsatisfactory in many respects. However, as the Minister had withdrawn the right to grant severances from the Committee before the enquiry commenced, it does not appear relevant to report on this matter.





CATARAQUI COMMUNITY CENTRE

In the year 1972 the Township of Kingston undertook the erection of a Community Centre known as the Cataraqui Community Centre. The by-law authorizing the same received first reading on May 29th, 1972.

Paragraphs one, two and three read as follows:

- "1. There shall be established, erected and constructed in the Township of Kingston a Community Centre on the site as described in Schedule 'A' annexed hereto at an estimated cost of \$300,000.00 for a building comprising an indoor skating rink and auditorium.
2. A sum not exceeding \$300,000.00 shall be raised by a levy on the rateable property in the Township of Kingston for a period of ten years.
3. The debentures to be issued for the loan to be effected to pay for the cost of the work when completed shall not exceed the sum of \$300,000.00 and shall bear interest at such rates as the Council may determine and be made payable within ten years on the installment plan."

As the undertaking required borrowing by way of debenture, the approval of the Ontario Municipal Board was necessary. That approval was given by order dated August 11, 1972 and stated in part "that the corporation may now proceed with the said undertaking





at a total cost not to exceed \$300,000.00."

In fact the Township entered into a contract on September 1, 1972 for the erection of the Centre at a cost of \$438,278.00. The funds required, above the amount to be borrowed, came from current revenue, and had been included in the amount of \$140,000.00 in the 1972 budget adopted on March 13, 1972.

The submission of the Township is that "the municipality obtained the approval of that portion of the total cost that was to be financed by debenture." The balance of the cost was to be financed out of current revenue and did not therefore require the Board's approval."

In my view the procedure followed by the Township was, at best, misleading. The by-law should have recited the total cost correctly at \$438,000.00 recited the source of the \$140,000.00 to be used, and then continued with the matter of borrowing by way of debenture of the balance amounting to \$300,000.00. Had such proper procedure been followed the Ontario Municipal Board and the public could be under no misapprehension as to the extent of the undertaking.




CONCLUSIONS

By reason of the variety of allegations which arose from the scope of the enquiry, for purposes of clarity my conclusion with respect to each has been stated in the body of the report.

I wish to state my appreciation of the most capable manner in which Commission Counsel prepared and presented the evidence. All other Counsel appearing have been of considerable assistance. Miss Jean Anderson has been most helpful in the production of the report.

August, 1974

  
Commissioner





# A P P E N D I X A

Staff of Commission

D. D. Diplock, Q.C.

Commission Counsel

George Calver

Appearances

W. A. Kelly

Counsel for the Township  
of Kingston

Julian H. Porter

Counsel for J. Earl McEwen

John E. Henderson, Q.C.

Counsel for Philip D. Quintin

Henry L. Cartwright

Counsel for Clifford Allen

Dr. James Bennett

In person

Dr. John Milligan

In person





WITNESSES

1.     George MUIRHEAD                     Director of Planning and Urban Renewal  
for the City of Kingston.
2.     Lawrence SOUTH                     Regional Engineer with Ontario Ministry  
of the Environment.
3.     Douglas A. GORDON                  Clerk of Kingston Township.
4.     Archibald John FORSYTH           Supervisor in Project Development Branch  
with the Ontario Ministry of the Environ-  
ment.
5.     Jacob Nicholas DICK                Operations Engineer responsible for the  
operation of those facilities constructed  
by the Ontario Water Resources Commission  
or presently the Ministry of the Environ-  
ment.
6.     John MILLIGAN                     Ph.D. in Physiology, Minor and Physical  
Chemistry teaching medical students in  
cellular physiology.
7.     James Alfred BENNETT              B.Sc. from Queen's University, M.Sc. and  
Ph.D. from University of Michigan,  
Associate Professor teaching electrical  
engineering at Queen's University and  
head of the power engineering group at  
Queen's University.
8.     John F. RICHARDSON                Administrator of real properties of  
Queen's University other than those used  
for academic purposes.
9.     Fred HOWITT                        Retired metallurgist.
10.    Charles TIFFIN                     Teacher employed by Frontenac Board of  
Education.
11.    Donald DEMKO                      President of Ratepayers Association  
Kingston Township.
12.    Ronald FERRIE                     Resident of Kingston Township for  
seven years.
13.    S. F. RYDER                        Assessment Commissioner Region No. 5  
encompassing the Counties of Frontenac  
and Lennox and Addington.





14. Robert William SMITH Sales Manager St. Lawrence District,  
Bell Telephone and a resident of Kingston  
Township.
15. Effie Lovinia ELLERBECK Widow of vendor of "Ellerbeck property."
16. William Leslie ALLUM Retired farmer and vendor of "Allum  
property."
17. Barry Wayne MILLER Professional engineer, member of firm  
of Campbell Smith Limited, consultants  
engaged from time to time by Township  
of Kingston.
18. William Eric BRADLEY One of the Executors of estate of Roy  
C. Bradley, vendors of the "Bradley  
property."
19. Hubert Nicholas SPLINTER Building contractor in Township of  
Kingston and one of the purchasers of  
Ellerbeck property with a right to an  
option on Allum property.
20. Philip R. CLARKE Subdivision Co-ordinator Highgate  
properties for one of Splinter Companies.
21. Peter Gordon DAVY Kingston area realtor.
22. Melville Charles BLACHFORD Kinston area realtor.
23. Gerald William BOYD Kingston area real estate broker.
24. J. Earl McEWEN Reeve of Kingston Township.
25. Marian Joan STONESS Clerk-Typist of Township of Kingston
26. Heather Jane FOX Secretary of Township of Kingston and  
Secretary of Kingston Township Planning  
Board.
27. Peter C. A. BEEMAN Chairman of Kingston Township Planning  
Board in May of 1972.
28. Donald HITCHOCK Purchases of 11.7 acres of land in 1971  
from McEwen and Robinson.
29. Kenneth ROBINSON Partner in land purchases with Earl  
McEwen.
30. Sidney SWENDSEN Owner of garage at 700 Front Road.
31. John GIRLING Member of Kingston Township Council and  
former Reeve of Township.





Witnesses - 3

32. Ronald Whitney ASSELSTINE Farmer living at Hartington, Ontario.
33. John MacKAY Owner of VICOM Limited and former manager of airport.
34. Gerald BABCOCK Farmer living three miles east of Hartington, Ontario.
35. William Edward WEBSTER President of Webster Real Estate and Insurance Limited.
36. Philip D. QUINTIN Lawyer and Member of Kingston Township Council 1969-70 and 1971-72.
37. A. SANDER Manager of Operations and shareholder of Cobourg Construction Company Limited
38. John E. Taylor Clerk of the County of Frontenac.
39. William O. HALLIGAN Member of Frontenac County Council for eleven years representing Marlborough Township and member of Roads Committee in 1967.
40. Clifford Gordon H. ALLEN
41. Mrs. Diana SANTO Employee of Ministry of Treasury, Economics and Intergovernmental Affairs - Plans Administrations Branch.
42. Cecil LOUIS Assistant Manager of the Official Plans Section, Plans Administration Branch, Ministry of Treasury, Economics and Intergovernmental Affairs.
43. Dr. Kenneth ROSE A resident owner of land in Kingston Township.
44. Leslie LOCKHEAD Assistant Building Inspector in the Township of Kingston.





EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
1	Map of Kingston Area.
2	Kingston and Region Statistics 1971.
3	Suggested Order of Development prepared by J. H. Richards and dated June, 1959.
4	Map showing 1972 distribution of spot population.
5	Map, exhibit 1, with names inserted.
6	Portion of minutes of meeting of Kingston Area Planning Board held on September 4, 1969.
7	Portion of minutes of meeting of Kingston Area Planning Board held on April 2, 1970.
8	Plans of Sanitary Trunk Sewer System.
9	Sketch of Kingston Township Area, 1972.
10	Mr. Diplock's memorandum re sewage disposal and treatment.
11	Letter from OWRC dated July 10, 1967 to R. V. Anderson Associates
12	Letter from OWRC dated January 17, 1968 to Campbell Smith Ltd.
13	Letter from Garinger dated March 20, 1968 to Mr. South.
14	Minutes of Kingston Advisory Committee April 2, 1968.
15	Minutes of meeting with Kingston Township Council, April 2, 1958.
16	Letter from Owers to McTavish dated August 7, 1968.
17	Memo from Owers to McTavish dated August 9, 1968.
18	Memo from Osmond to McTavish dated August 19, 1968.
19	Inspection report by McKenna dated November 19, 1968.
20	Letter to South from McKenna dated February 5, 1969.
21	Memo from South to McTavish dated February 24, 1969.
22	Memo from Owers to McTavish dated March 7, 1969.
23	Letter from Hyde to Osmond dated March 25, 1969.
24	Letter to McTavish from Barr dated June 22, 1970.
25	Letter to OWRC from McKenna dated July 30, 1970.





Exhibits - 2

- 26 Letter to Township Clerk from Forsyth dated November 29, 1970.
- 27 Field inspection by J. M. Laberre, December 15, 1970.
- 28 Letter to Gordon from Forsyth dated January 20, 1972.
- 29 Township meeting A.J.
- 30 Letter to Mr. McTavish from A. J. Forsyth.
- 31 Record of Dick, South, Reichart meeting.
- 32 Letter from Gordon to Forsyth.
- 33 Letter from Gordon to Forsyth.
- 34 Letter from South to Gordon.
- 35 Letter from Mr. Gordon to Mr. South.
- 36 Advisory Committee meeting.
- 37 Letter from Mr. Forsyth to Mr. Gordon.
- 38 Minister of the Environment - McKenna.
- 39 Memo to Mr. Dick from Mr. South.
- 40 Letter from Mr. South to Mr. Gordon.
- 41 Letter to Mr. Gordon from Mr. Forsyth.
- 42 Letter to Mr. Gordon from Mr. Forsyth.
- 43 Memo to J. R. Barr from P. G. Cockburn.
- 44 Letter to Mr. Gordon from Mr. South.
- 45 Plan of Area designated for serving.
- 46 Chart entitled, "Procedures for the OWRC-Municipal Projects".
- 47 Photostatic copy of by-law No. 1024, Standard Subdivision Agreement.
- 48 Map representing sewer system, actual and proposed lines.
- 49 Map of existing water works system of Kingston.
- 50 Letter to Mr. South from Mr. Stevens dated November 15, 1967.





Exhibits - 3

- 51 Letter to Mr. Gordon from Mr. South dated February 16, 1968.
- 52 Letter to Mr. Smith from Mr. South dated April 8, 1968.
- 53 Memo to file from Mr. South dated May 17, 1968.
- 54 Report by McKenna on Point Pleasant dated February 4, 1969.
- 55 Cost estimate of two schemes from Exhibit No. 54.
- 56 Gore & Storrie Ltd. preliminary report dated March 26, 1968.
- 57 Letter to Mrs. Fox from Campbell Smith Ltd., dated February 10, 1969.
- 58 Letter to Mr. Gordon from Mr. Sharpe dated November 18, 1970.
- 59 Letter to Mr. Barr from Mr. Eberlee dated November 12, 1970.
- 60 Letter to Mr. Gordon from Mr. Sharpe dated January 19, 1971.
- 61 Letter to Mr. Sharpe from Mr. McEwen dated February 10, 1971.
- 62 Letter to Mr. Hay from Campbell Smith Ltd., dated March 22, 1971.
- 63 Letter to Mr. Sharpe from Mr. Barr dated November 12, 1971.
- 64 Report, Point Pleasant, water works, October 3, 1972.
- 65 Report to Mr. Kerr, Q.C., by R. D. Johnson dated July, 1971.
- 66 Letter to Mr. Clark from Mr. South dated February 15, 1973.
- 67 Letter to Mr. Gordon from Mr. South, October 26, 1972.
- 68 General tender by Totten, Sims, Hubicki dated October 1969.
- 69 Report - New Water Treatment Plant, Totten, Sims, Hubicki,  
dated July 21, 1970.
- 70 Summary of whole series of exhibits on water works.
- 71 Incomplete (19 sheets) list sent to Mr. Diplock from Queen's Park
- 72 Dr. Milligan's map of Kingston Township dated July, 1973.
- 73 Abstract C2 T11363.
- 74 Deed - abstract Ellerbeck to McEwen.
- 75 Mortgage Splinter, McEwen.





Exhibits - 4

- 76 Abstract 194361 2nd last instrument.
- 77 Deed, Allum, McEwen.
- 78 Mortgage McEwen - Allum.
- 79 Deposit on Title 234675.
- 80 Abstract commencing with Inspection Q8322.
- 81 Deed, Bradley-McEwen with adjustment.
- 82 Mortgage, McEwen to Bradley.
- 83 Deed, McEwen-Splinter, No. 236689.
- 84 Mortgages, Splinter-McEwen, No. 237210.
- 85 Record of various draft subdivision plans, recommendations, Kingston Area Planning Board, 1949-1973,
- 86 Abstract from Registry Office of Ellerbeck property Lot 2, Concession 2.
- 87 Abstract from Registry Office of Allum property, Lot 3, Concession 2.
- 88 Abstract from Registry Office of Bradley property.
- 89 Resolution No. 109.
- 90 Copy of Motion 470 from minutes of December 29, 1971.
- 91 Copy of Motion 341 dated August 30, 1972,
- 92 Minutes of meeting of August 1, 1972.
- 93 Article from Toronto Star dated May 10, 1973.
- 94 Instrument No. 213877 transfer or deed from R. E. McEwen and J. Earl McEwen to G. Splinter Limited and G. Splinter & Sons Ltd.
- 95 Document numbered 213879, deed Gerald Splinter and Hubert Splinter
- 96 Mortgage J. Splinter and H. Splinter to R.E. and J.E. McEwen, No. 213878.
- 97 Registered Plan No. 1596.
- 98 Mortgage, G & H Splinter to R. and J.E. McEwen, No. 213889.
- 99 Discharge of mortgage 230166.
- 100 Formal Returns of elections for years 1968, 1969, 1970 and 1971.





Exhibits - 5

- 101 Minutes of Meeting of August 3, 1972, Township of Kingston Council.
- 102 Minutes dated April 18, 1972.
- 103 Letter dated April 10, 1972 from J. Earl McEwen to Clerk of Kingston Township Council.
- 104 Official zoning plan, Township of Kingston.
- 105 By-law No. 749.
- 106 Letter from C. A. Louis to Clerk of Township of Kingston dated September 1, 1970.
- 107 Notice of August 3, Kingston Township and map.
- 108 Notice of approval of By-law for water works, June 28, 1972.
- 109 Notice in Kingston Whig Standard By-law 72-35, 72-36.
- 110 Kingston Whig Standard article, October 12, 1972.
- 111 Newspaper article, Kingston Whig Standard, March 15, 1973.
- 112 Minutes of May 18, 1973 meeting and two letters, motion 73-19 (approval of plan amendment)
- 113 Municipal Planning Consultants Plan No. 8, Official report.
- 114 KPUC showing various water arteries available within the city.
- 115 Master plans done by consultants Johnson, Sustronk & Weinstein.
- 116 Amendment No. 2 to official plan.
- 117 Article in Kingston Whig-Standard, dated March 29, 1973, entitled "Some major benefits for some."
- 118 Article in Kingston Whig-Standard, entitled "Jim Bennett for Reeve" and "Vote Jim Bennett for Reeve".
- 119 Four page flyer entitled, "Jim Bennett says, 'I can lower your taxes'."
- 120 Newspaper ad entitled "Thank you electors of Kingston Township from Jim Bennett", dated December 11th, 1972.
- 121 Article headed, "Kingston Township, Bennett offers letters to prove he wants to help" dated March 15, 1973.
- 122 News paper article from the Kingston Whig-Standard dated April 23, 1973.





Exhibits - 6

- 123 Newspaper article from the Kingston Whig-Standard dated March 16, 1973.
- 124 Newspaper article from the Kingston Whig-Standard dated May 1, 1973.
- 125 Minutes of Meeting of Kingston Municipal Planning Board dated March 9, 1972.
- 126 Minutes of Meeting of Kingston Municipal Planning Board dated October 11, 1972.
- 127 Minutes of Meeting of Kingston Municipal Planning Board dated December 29, 1972.
- 128 Letter dated October 3, 1972 re water area.
- 129 Letter dated October 3, 1972, re sewer area.
- 130 Letter dated October 26, 1972 to Clerk re waterworks by-law.
- 131 Letter dated February 26, 1972 re special rate for sewage plant.
- 132 Excerpt from assessment rolls.
- 133 Letter dated April 30, 1973 from Richardson and Bennett to the Kingston Township Council.
- 134 Letter dated September 20, 1968 addressed to D. A. Gordon from D. B. Stoness.
- 135 Pamphlet "Planning for Your Future in Kingston Township."
- 136 Newspaper article from Whig-Standard dated Saturday, March 31, 1973.
- 137 Map of Township of Kingston referred to in evidence of Mr. Splinter.
- 138 Listing taken from the Cataraqui Region Conservation Authority.
- 139 Listing taken from the Kingston Township Planning Board.
- 140 Listing taken from the Frontenac Library Board.
- 141 Listing taken from the Cataraqui Conservation Authority from 1965 to 1972 inclusive.
- 142 Listing taken from the Kingston Area Planning Board from 1962 to 1973 inclusive.
- 143 Indenture made June 2, 1966 between Ellerbeck and McEwen with Schedule A attached.
- 144 Letter from Reeve McEwen to Kingston Township Planning Board dated April 10, 1972.







Exhibits - 7

- 145 Township of Kingston By-law No. 72-20.
- 146 Photostate of original handwritten minutes of the regular meeting of Council, August 3, 1971.
- 147 Minutes of meetings of Council, dated April 4th and April 18th.
- 148 Minutes of special Council meeting of June 19, 1972.
- 149 By-law 72-40.
- 150 Meeting of August 30, 1972.
- 151 Special meeting of Council, September 29, 1972.
- 152 Letter from Mr. McEwen to Township Council dated May 18, 1973.
- 153 Minutes of Council meeting of May 18, 1973.
- 154 Article from Whig-Standard of May 12, 1973.
- 155 Article in Whig-Standard of June 20, 1973.
- 156 Form 20 and 20A under the Municipal Act.
- 157 Article from Whig-Standard dated August 12, 1969 entitled "The Past Comes Up".
- 158 Resolution 417, dated September 29, 1972.
- 159 Letter from Municipal Affairs to Mrs. H. Fox dated May 19, 1971 re File No. T-21953.
- 160 Letter from Mrs. H. Fox to Kingston Township Council dated July 23, 1971.
- 161 Letter from Municipal Affairs to Clerk of the Township of Kingston dated March 6, 1972.
- 162 Minutes of Council meetings for the year 1970.
- 163 Minutes of Council meetings for the year 1971.
- 164 Minutes of Council meetings for the year 1972.
- 165 Minutes of Council meetings for the year 1973.
- 166 Planning Board minutes for 1970.
- 167 Planning Board minutes for 1971.
- 168 Planning Board minutes for 1972.
- 169 Planning Board minutes for 1973.





Exhibits - 8

- 170 Map from Instrument No. 210537.
- 171 Abstract of title referring to Lot 9, Concession 3.
- 172 Abstract of title referring to Lot 10, Concession 3.
- 173 Transfer deed of property from Morrow Estate to McEwen and Robinson, No. 199422.
- 174 Instrument No. 201537, transfer deed from McEwen and Robinson to Cobourg Construction Company.
- 175 Mortgage from Hitchcock to McEwen and Robinson, registered November 22, 1971, No. 217374.
- 176 Deed from Hitchcock to McEwen and Robinson, registered November 22, 1971, No. 217375.
- 177 Partial discharge of mortgage McEwen and Robinson to Hitchcock, Instrument No. 222323.
- 178 Copy of Whig-Standard dated June 8, 1973.
- 179 Copy of Whig-Standard dated July 9, 1973.
- 180 Notice in Whig-Standard dated September 21st, 1973.
- 181 Motion No. 176, Township of Kingston.
- 182 Copy of Motion No. 85.
- 183 Copy of building permit No. 44553.
- 184 Minutes of Frontenac Road Committee meeting, August 5, 1966.
- 185 Minutes of County Highway Committee meeting dated August 9th, 1967.
- 186 Deed from Harpelle to McEwen.
- 187 Deed from McEwen to Svendsen.
- 188 Mortgage from Svendsen to McEwen.
- 189 Affidavit of Mr. Wakelin, dated October 1st, 1973.
- 190 Letter from Mr. Hains to Kingston Township Council dated May 29th, 1972.
- 191 Article from Kingston Whig-Standard.
- 192 List prepared for requitement No. 3 -- D. D. Diplock, September 21st, 1973, building permits issued for Bay Ridge 3C plan 1589.





Exhibits - 9

- 193 Letters from Quintin & Couchman to Township, Township to Quintin & Couchman, Smith & Smith to Township, Township to Smith & Smith.
- 194 Six instruments, numbers 218484, 223154, 224960, 225890, 229575 and 230385.
- 195 Deed No. 22098 or 22038.
- 196 Document No. 218076 for the release of 36 lots.
- 197 Letter, December 21, 1971 from Yevrah Developments to Council and letter December 22, 1971 from Campbell Smith Ltd., to Yevrah Developments.
- 198 Notice of meeting of Committee of Adjustments re application B-644, Resolution of Committee, Decision of Committee of Adjustments, full application by Mr. Aylesworth with attached sketch.
- 199 Letter from Mr. Quintin of January 29, 1971 with copy of Mr. Aylesworth's application for consent.
- 200 List of meetings attended by Quintin, not declaring conflict of interest.
- 201 Original Agreement of Purchase and Sale, \$56,700.
- 202 Agreement of Purchase and Sale between Henry Ostrum and Mr. Quintin.
- 203 Agreement of Purchase between Yevrah Development and Mr. Quintin.
- 204 Photocopy of tender form from Cobourg Construct Company.
- 205 Photocopy of second tender form from Cobourg Construction Company.
- 206 Letter dated January 8, 1970 from Cobourg Construction to the Township of Kingston.
- 207 Photocopy of document entitled, "Corporation of the Township of Kingston, contract for the construction of watermain and accessories, project No. 33-68."
- 208 Page 4, paragraph 15 of contract.
- 209 Registered instrument No. 219398 conveyance of 9 lots from Yevrah to Quintin;  
Registered instrument No. 219399 relating to same property;  
Registered instrument No. 225884 transfer number of lots Quintin to Mortsoo;





Exhibits - 10

Registered instrument No. 225885 mortgage back on same land;  
Registered instrument No. 240429 discharge of mortgage Quintin  
to Mortsoo.

- 210 Deed from Yevrah to Splinter registered instrument No. 223666;  
Mortgage Splinters to Quintin, instrument No. 223671.
- 211 Vouchers showing payments by Township to Ken & Ray's, George  
Wise, Mildred Britt and Anthony Smith Estate.
- 212 Sheaf of correspondence respecting Ken & Ray's Collins Bay  
Supermarket Limited.
- 213 Certified abstract - Township of Kingston, Lots 32-33-34-35.
- 214 Severances applied for 1967-1972 for Allen and Hemlock Farms  
Co-Op Ltd. - pages 1 and 2.
- 215 Amendment No. 7 to the Official Plan of the Township of Kingston  
Planning Area (preliminary draft).
- 216 Letter dated June 1, 1972 from Township of Kingston to  
Messrs. Little & Farrow.
- 217 Letter dated May 16, 1972 from Municipal Planning Consultants  
Company Limited to Mr. Beeman.
- 218 Letters - 1) Municipal Affairs, November 26, 1970;  
2) Bruce MacNabb, December 11, 1970;  
3) Whig-Standard, April 8, 1971;  
4) Ontario Municipal Board, April 27, 1971; and  
5) Ontario Municipal Board - The Planning Act.
- 219 Suggested Severance Policy Guidelines for the Committee of  
Adjustments.
- 220 Pages 4 and 5 of "Property Designation & Zoning"(see exhibit  
214).
- 221 Deeds 19641, 110779, 146175, 192411, 195754 and Suggested  
Severance Policy Guidelines for the Committee.
- 222 Deeds, instruments numbers 129724, 124608, 112181, 111906,  
123220, 122976.
- 223 Article Whig-Standard August 22, 1972.
- 224 Letter of September 5, 1972 - Mr. G. M. Farrow.
- 225 Letter of November 2, 1972 - copy for the Minister's retention.
- 226 Abstract of Titles, Lots 15, 14 Concession 3.





Exhibits - 11

- 227 Pages 3 and 4 of attachment to Dr. Milligan's allegations.
- 228 Letters dated March 24, 1972, April 6, 1972 and November 29, 1972.
- 229 Letter from J. Dick dated December 8, 1970.
- 230 Series of letters dated March 26, 1968, September 26, 1968, May 26, 1970, June 15, 1970, July 14, 1970, November 26, 1970, June 11, 1971 and July 31, 1972.
- 231 Copy of letter dated September 1, 1970 from Department Treasury, Economics and Intergovernmental Affairs to Clerk of Kingston Township.
- 232 Letter from Peter W. Boles dated october 31, 1973 to Mr. Beeman, Chairman Township of Kingston Planning Board.
- 233 Extracts from minutes of Committee of Adjustments 1969 to 1972.
- 234 Document headed Township of Kingston Comprehensive Zoning By-Law, 1968.
- 235 Photocopy of letter of November 26, 1970 from Campbell Smith Limited, Consulting Engineers to Township of Kingston.
- 236 Newspaper clipping from Kingston Whig-Standard dated August 6, 1969.
- 237 Copy of By-Law No. 72-17 of Kingston Township with budget attachments and notes of meeting of November 19, 1970.
- 238 Copy of By-law No. 72-27 of Kingston Township - debentures.
- 239 Decision No. H48-36, Ontario Municipal Board, dated August 11, 1972.
- 240 Letter of January 15, 1973.
- 241 Newspaper clipping from Kingston Whig-Standard dated September 18, 1972.
- 242 Analysis of Council meetings 1970 to 1973.
- 243 Letter to the Reeve and Kingston Township Council from D. A. Gordon, dated December 7, 1971.
- 244 Letter to D. A. Gordon, dated November 22, 1971 from N. A. Robertson, Public Health Inspector.
- 245 Copy of letter from Mr. Gordon to Committee of Adjustments.





Exhibits - 12

- 246 Correspondence of March 23, 1966, April 6, 1966 and April 14, 1966 between Township Council and the Honourable W. J. Spooner.
- 247 Letter from Ministry of Consumer and Corporate Relations dated July 24, 1973.
- 248 Drawing 6 west half Concession II Kingston Township.
- 249 Excerpts from motions of Township Council 1966-1967.
- 250 Miscellaneous newspaper clippings 1968, 1969.
- 251 Newspaper article entitled "Bay Ridge Project on the Move, Population could hit 30,000", June 30, 1971, Kingston Whig-Standard.
- 252 Three engineering drawings of Henderson Subdivision.
- 253 Subdivision Agreement between Township of Kingston and Auden Park Developments Limited, 20 October, 1970.
- 254 Correspondence between Clerk of Kingston Township and Campbell Smith Limited and J. R. Herrington re Henderson Subdivision.
- 255 Bill for storm flooding sewer work on Hillview Subdivision.
- 256 File of letters concerning Hillview storm sewers.
- 257 Letter from Bay Hill Development Limited to Township of Kingston, Letter from Mr. Wade of J. D. Lee Company to Township.
- 258 Indenture between Municipal Corporation of Township of Kingston and Bay Hill Development Limited dated November 19, 1970.
- 259 Sketch of Shillington Place visited by witness Dr. Kenneth Rose.
- 260 Letter from J. Earl McEwen, Reeve, Township of Kingston to Mr. J. Bennett dated January 19, 1972.
- 261 Letter from Industrial Commission Township Kingston dated October 19, 1970 to Reeve and Council Township Kingston and letter from Industrial Commission to Herrington dated November 17, 1969.





Exhibits - 13

- 262 Offer to Purchase between Bay Hill Developments Ltd., and James and Robert Martin Construction dated April 10, 1973 and Offer to Purchase between Bay Hill and Quarin Bros., dated May 15, 1973.
- 263 Allegation that Kingston Township Council did act in an unreasonable and irresponsible manner, etc.

202 Offer to Purchase between Bay Hill Development Ltd., and James and Robert Martin (contract dated April 10, 1973) and Offer to Purchase between Bay Hill and Martin Bros., dated May 12, 1973.

203 Allegation that Kingston Township Council did act in an unreasonable and irresponsible manner, etc.

















